

Public Comment Response Summary
Proposed Revisions to 18 AAC Chapter 75

March 2017

Introduction

The Alaska Department of Environmental Conservation's Prevention, Preparedness, and Response Program proposed this package to adopt new regulations in 18 AAC 75 for the registration of Class 2 facilities – facilities that store noncrude oil in aboveground storage tanks, have storage capacities of 1,000 gallons or greater, and are not subject to AS 46.04.030.

Summary of changes

This packet proposes to adopt new regulations in 18 AAC 75 dealing with Class 2 facilities including the following: adding a new section 18 AAC 75.915 to address the applicability requirements; adding a new section 18 AAC 75.920 to address the registration and notification requirements; adding a new section 18 AAC 75.985 to create definitions related to Class 2 facilities.

In response to the questions and comments received during public review period, the department made several changes to the original proposal including: excluding several types aboveground storage tanks (ASTs) from the regulations; changing the minimum capacity for ASTs subject to the regulations from 500 gallons to 1,000 gallons; modifying the definitions for “aboveground storage tank” and “Class 2 facility”; adding definitions for “oil-filled operational equipment” and “permanently closed”; and deleting the definition for “removed from service”.

Organization

This document is organized in a comment/response format and addresses comments made during the formal public review period that ended on 01/19/2017.

Response Summary

1.	<u>Comment:</u> One commenter expressed strong opposition to the regulations.
2.	<u>Comment:</u> Two commenters expressed support of the registration process.
3.	<u>Comment:</u> One commenter stated that the intent of the regulations is good.
4.	<u>Comment:</u> One commenter stated that it will be hard to enforce the regulations, especially without clearly defined repercussions for failing to register. <u>Response:</u> The goal is to do outreach and educate stakeholders and not be heavy handed. The department will evaluate the severity of the non-compliance and use its compliance authorities if necessary.
5.	<u>Comment:</u> One commenter pointed out that portable tanks are not addressed in the regulations and suggested they be exempt. <u>Response:</u> A portable tank meets the definition of an AST and must be included in the registration and notification process unless one of the exclusions under 18 AAC 75.915(b) applies.
6.	<u>Comment:</u> Two commenters suggested that the department should request tank information from fuel delivery companies rather than do its own registration program. <u>Response:</u> It is not practical to request such information from an intermediary and the companies may not have all of the information the department requires.

7.	<p><u>Comment:</u> Several commenters questioned whether the department has the financial means to implement and maintain the registration program because the Additional Regulations Notice Information listed the operating costs for the initial year and subsequent years as \$0. The commenters were concerned the data obtained by the department would quickly become obsolete without sufficient funding.</p> <p><u>Response:</u> The department did not list operating costs in the Additional Regulations Notice Information because the cost of the registration of facilities is not expected to be a net increase of costs to the department.</p> <p>The reduction of spills will reduce the financial impact on the state, communities, and owners and operators. Additionally, to keep costs of registration to a minimum, the department will be relying on electronic notification, other agencies, and department staff that are in communities on other business to inform facilities about the registration requirements. PPRP staff that are already in these communities will also be providing technical assistance to help prevent spills.</p>
8.	<p><u>Comment:</u> Several commenters requested an extension to the public comment period because: the comment period was too short (30 days), ill-timed (during the holiday season), and insufficiently advertised and the regulations affect facilities that are currently unregulated.</p> <p><u>Response:</u> Thirty days is the standard timeframe for a regulation package. The department did not intentionally hold the comment period during the holidays, but it was delayed unexpectedly. The department published a public notice in the Alaska Dispatch News; posted the notice on the Alaska Online Public Notice System; posted it on the SPAR Division Regulations webpage; posted a message on the department's Facebook page; and sent emails to multiple lists which resulted in reaching out to over 1,000 email accounts. Additionally, the department held several meetings with Class 2 facility stakeholders between August 2015 and January 2016; held an informal public scoping in February 2016; and made presentations to the public about Class 2 facilities at the Alaska Forum on the Environment on February 9, 2016 and the Rural Energy Conference on April 28, 2016.</p>
9.	<p><u>Comment:</u> Several commenters stated that the proposed registration process is duplicating efforts by the department and other agencies and suggested the department use the information that already exists rather than "recreate the wheel". The commenters suggested the department use information from Spill Prevention Control and Countermeasure (SPCC) Plans, Tier II reports, Storm Water Pollution Prevention Plans, spill reports, or conduct public scoping or other studies.</p> <p><u>Response:</u> The department investigated these options and determined they could not be used to gather the desired information and meet the needs of the department.</p>
10.	<p><u>Comment:</u> One commenter stated that the proposed regulations conflict with and are preempted by the Environmental Protection Agency's (EPA) SPCC Rule and is therefore in violation of AS 46.04.070. The commenter also stated that there is no pollution control benefit over the SPCC Rule.</p> <p><u>Response:</u> The SPCC Rule does not prohibit the state from developing its own regulations regarding oil pollution and the proposed regulations do not conflict with the SPCC Rule. The benefit will be from the technical assistance provided to these facilities which will help prevent spills. The reduction of spills will reduce the financial impact on the state, communities, and owners and operators.</p>

11.	<p><u>Comment:</u> Two commenters stated that, although the cost for facilities to register may be small, the cost for facilities to meet future regulations may be very high.</p> <p><u>Response:</u> The department has discussed the possibility of future regulations for Class 2 facilities but is not certain there will be additional ones. The current strategy includes inventorying the facilities and working with them to find out what technical assistance they need, provide education, and support and to find out if additional regulations would be beneficial.</p>
12.	<p><u>Comment:</u> One commenter suggested home heating oil tanks should be included because the owners of those tanks receive little or no training for tank maintenance and cleanup of spills from those tanks are numerous and costly.</p> <p><u>Response:</u> The department is aware of the number and costs associated with home heating oil tank spills and is considering separate regulations to address this issue.</p>
13.	<p><u>Comment:</u> Two commenters stated that the proposed regulations do not align with the stated purpose of reducing future response and remediation costs.</p> <p><u>Response:</u> Gathering the registration information will allow the department to provide technical assistance to facilities to help prevent spills thus reducing response and remediation costs.</p>
14.	<p><u>Comment:</u> Two commenters stated that the department has not provided sufficient information justifying the need for the proposed regulations.</p> <p><u>Response:</u> The department disagrees. The need for the proposed regulations was addressed in the frequently asked questions, which were part of the public notice package, as follows: “The department’s goal is to determine the number and location of Class 2 facilities in the state. Currently, the department does not have this information and often only finds out about these facilities after a spill has occurred. Gathering this information will allow the department to provide technical assistance to these facilities to help prevent spills and gauge the response measures of facilities when spills occur”.</p>
15.	<p><u>Comment:</u> Several commenters expressed concern that the proposed regulations will apply to facilities with an oil discharge prevention and contingency plan (contingency plan).</p> <p><u>Response:</u> The definition for “Class 2 facility” excludes facilities required under AS 46.04.030 to have a contingency plan.</p>
16.	<p><u>Comment:</u> Several commenters expressed concern that the proposed regulations are a precursor to future fees.</p> <p><u>Response:</u> The department has not proposed fees and has not planned to have any in the future.</p>
17.	<p><u>Comment:</u> One commenter asked why the registration form states that tanks of 500 gallons must be registered.</p> <p><u>Response:</u> The proposed regulations applied to ASTs with capacities of 500 gallons or greater located at a Class 2 facility. The department has since changed the minimum AST capacity to 1,000 gallons and will update the registration form.</p>
18.	<p><u>Comment:</u> One commenter suggested the following changes to the registration form: “existence” in the introductory paragraph should be changed to “service”; “education institution” should be added as a type of owner; and “clinic” should be added to “hospital” under type of facility.</p> <p><u>Response:</u> The department will take these suggestions into consideration when the registration form is finalized.</p>

19.	<p><u>Comment:</u> One commenter stated that the registration form does not specify the size and type of tanks that must be registered. The commenter stated that the form also doesn't mention the type of oil the tanks are storing.</p> <p><u>Response:</u> The department will modify the registration form to include an instructions page to address these issues.</p>
20.	<p><u>Comment:</u> Two commenters questioned the statutory authority for the proposed registration program. One of the commenters suggested the department ask the Legislature for specific statutory authority for Class 2 facilities.</p> <p><u>Response:</u> AS 46.03.020(10)(A) gives the department the authority to adopt regulations necessary to carry out the purposes of that chapter, including regulations providing for control, prevention, and abatement of air, water, or land or subsurface pollution. AS 46.04.070 gives the department the authority to adoption regulations necessary to carry out the purposes of that chapter (Oil and Hazardous Substance Pollution Control). The registration program will allow the department to identify Class 2 facilities and provide technical assistance to them to help prevent spills and gauge the response measures of facilities when spills occur.</p>
21.	<p><u>Comment:</u> One commenter suggested that the department use the authority under AS 46.03.020(5) to conduct studies, inquiries, surveys, or analyses to gather this information rather than the proposed regulatory program.</p> <p><u>Response:</u> The department does not agree that this method would provide the data that can be gained from the registration of Class 2 facilities.</p>
22.	<p><u>Comment:</u> Several commenters stated that it is unclear what tank size and oil products that the proposed regulations apply to.</p> <p><u>Response:</u> The department agrees and has updated language in 18 AAC 75.915(b) and the definition for "aboveground storage tanks" to clarify the requirements.</p>
23.	<p><u>Comment:</u> One commenter stated that it is unclear whether the regulations apply to oil filled equipment. The commenter suggested the department use the same policy as the EPA. Another commenter suggested amending the definition for "aboveground oil storage tank" to exclude oil filled equipment such as transformers.</p> <p><u>Response:</u> The department has modified 18 AAC 75.915(b) to exclude oil-filled operational equipment from the requirements of 18 AAC 75.915 - 18 AAC 75.985 and added a definition based on the EPA's definition for that term to 18 AAC 75.985.</p>
24.	<p><u>Comment:</u> One commenter suggested the minimum tank size be changed to greater than 1,000 gallons.</p> <p><u>Response:</u> The department agrees and has changed the minimum tank size to 1,000 gallons or greater.</p>
25.	<p><u>Comment:</u> One commenter suggested that the regulations should apply to any facility that has a capacity of 1,000 gallons or greater, regardless of use or ownership.</p> <p><u>Response:</u> The department is considering separate regulations to address home heating oil tanks.</p>
26.	<p><u>Comment:</u> One commenter suggested that containers of any size be included in the storage capacity calculation.</p> <p><u>Response:</u> The department does not agree that it would be productive to register ASTs of any size.</p>

27.	<p><u>Comment:</u> Several commenters expressed concern that many facilities will be categorized as Class 2 facilities without their knowledge.</p> <p><u>Response:</u> The department will continue its outreach effort to inform facilities about the new regulations and will not use such instances of noncompliance to initiate enforcement actions.</p>
28.	<p><u>Comment:</u> One commenter expressed concern that the proposed mechanism, thresholds, immense scope, and volume of required data will hinder overall compliance. The commenter also expressed concern about the large outreach effort that will be required to implement the program and suggested that the department uses 1,320 gallons as the facility capacity threshold to eliminate facilities with one 1,000-gallon tank and make the outreach efforts more achievable.</p> <p><u>Response:</u> The department acknowledges that this will be a big effort, that it will take time to educate facilities and get them registered, and that the efforts may not result in all Class 2 facilities registering. However, it will provide the department with valuable information about ASTs in Alaska. The department considered changing the minimum capacity for Class 2 facilities but has decided to leave it at 1,000 gallons in order to capture a larger picture of the ASTs in Alaska.</p>
29.	<p><u>Comment:</u> One commenter noted that the department conducted a survey of facilities with capacities of 5,000 – 10,000 barrels in 1991 and the legislature determined that it was not feasible to regulate the facilities because of the impact to the facilities and the regulators.</p> <p><u>Response:</u> The department knows of the Noncrude Facility Survey prepared by ECO Engineering, Inc. in 1992 and the Legislature’s decision not to follow the author’s recommendation that facilities with storage capacities between 5,000 to 10,000 barrels should not meet a lesser standard than those with over 10,000 barrels. In 2015 the Legislature requested that the department reduce costs of expensive clean-ups and response. The Class 2 facilities regulations were developed in response to that directive and are expected to reduce the financial impact on the state, communities, and owners and operators.</p>
30.	<p><u>Comment:</u> One commenter stated that the registration of facilities with capacities of 1,000 gallons is a huge overreach.</p> <p><u>Response:</u> The registration of facilities of this size is not uncommon among state and federal regulations.</p>
31.	<p><u>Comment:</u> One commenter stated that the regulations are too broad with many key details undefined, the department’s attempt to fill these gaps using the FAQs is inappropriate and ineffective, and the proposed regulations should be revised to incorporate the information in the FAQs.</p> <p><u>Response:</u> It is standard practice for the department to use the FAQs to address issues raised during the public comment period. Some of the FAQs did bring up issues that needed to be clarified or addressed and the department updated the regulation language where appropriate.</p>

32.	<p><u>Comment:</u> One commenter stated that the 1-2 hours the department estimated it would take for a Class 2 Facility to register does not take into account owners of multiple facilities or owners with large inventories. As such, the department should reevaluate the regulations to include the additional time and cost associated with registration.</p> <p><u>Response:</u> The time required to complete the registration process was an average for the estimated Class 2 facilities. The department considered the fact that it may take some facilities more than 1-2 hours to register but does not believe it requires a change to the proposed regulations.</p>
33.	<p><u>Comment:</u> One commenter stated that the duration of temporary tanks, which was addressed in the FAQs and not in the regulations, should be explicit in the regulations and at least 180 days to match the Alaska construction season.</p> <p><u>Response:</u> The department has modified 18 AAC 75.915(b) to address temporary tanks. ASTs located at a facility for 90 consecutive days or less are excluded from 18 AAC 75.915 - 18 AAC 75.985.</p>
34.	<p><u>Comment:</u> One commenter expressed concern that the registration information will not be confidential. The commenter stated that disclosing the location of ASTs to the public will diminish the ability of owners to protect their facilities.</p> <p><u>Response:</u> The registration information will not be confidential. It will be handled in the same way as the information for contingency plan and underground storage tank (UST) facilities.</p>

18 AAC 75.915

35.	<p><u>Comment:</u> One commenter stated that the phrase “all owners and operators” in (a) is confusing and could result in duplicate registrations and should be replaced with “owners or operators”.</p> <p><u>Response:</u> The department has reworded the sentence and replaced “all owners and operators” with “the owner or operator”.</p>
36.	<p><u>Comment:</u> One commenter noted that the term “aboveground storage tank” is used in (b) but in the rest of the proposed regulations the term “aboveground oil storage tank” is used. The commenter requested consistency.</p> <p><u>Response:</u> The department has updated the language and the term “aboveground storage tank” or “AST” is used consistently.</p>
37.	<p><u>Comment:</u> One commenter questioned why (b)(2) excludes tanks with capacities less than 500 gallons and not less than 1,000 gallons.</p> <p><u>Response:</u> The proposed regulations applied to ASTs with capacities of 500 gallons or greater. The department has since changed the minimum capacity for ASTs to 1,000 gallons and 18 AAC 75.915(b) reflects this.</p>

18 AAC 75.920

38.	<p><u>Comment:</u> Several commenters stated that the 30-day notification requirement for tanks placed in service or removed from service was too short and should be increased to 6 or 12 months.</p> <p><u>Response:</u> The registration process is not considered overly burdensome so the 30-day notification requirement will remain unchanged.</p>
39.	<p><u>Comment:</u> One commenter suggested that the conjunction at the end of (a)(2)(A) should be “or” instead of “and”.</p> <p><u>Response:</u> The department has changed “and” to “or”.</p>

18 AAC 75.985

40.	<p><u>Comment:</u> One commenter suggested amending the definition for “aboveground oil storage tank” to include single vehicles with capacities of 1,000 gallons or more if the vehicle is located at the facility for more than a specific number of days per year (e.g., 60 days).</p> <p><u>Response:</u> The proposed definition included vehicles if “the vehicle contains oil and remains in the same location for more than 30 consecutive days”. The department has increased the time to 90 days and moved this requirement to 18 AAC 75.915(b). The department has increased the minimum capacity of ASTs to 1,000 gallons and this is also reflected in 18 AAC 75.915(b).</p>
41.	<p><u>Comment:</u> Two commenters noted that “aboveground oil storage tank” is already defined in 18 AAC 75.990 and stated that another definition will create confusion.</p> <p><u>Response:</u> The department considered using the existing definition in 18 AAC 75.990 but decided against it because the term in 18 AAC 75.985 has been changed to “aboveground storage tank”. The phrase, “In 18 AAC 75.915 - 18 AAC 75.985, unless the context indicates otherwise” is included in 18 AAC 75.985 to make it clear what the definition applies to.</p>
42.	<p><u>Comment:</u> One commenter suggested amending the definition for “aboveground oil storage tank” by removing “surge tank” since it is not used as a bulk storage container but rather it is part of a tank or pipeline system or installation. The commenter also suggested amending the definition to indicate that it applies to noncrude oil.</p> <p><u>Response:</u> The department has updated the definition and has removed “surge tank” from, and added “noncrude” to, the definition.</p>
43.	<p><u>Comment:</u> One commenter noted that the definitions for “aboveground oil storage tank” and “Class 2 facility” are inconsistent in terms of product – the former refers to “oil”, the latter refers to “noncrude oil”. The commenter also stated that it is unclear if an AST storing produced water, lube oil, mixtures that may or may not include crude oil, etc. would be considered part of the Class 2 facility.</p> <p><u>Response:</u> The department has changed “oil” to “noncrude oil” in the definition for “aboveground storage tank”. The department has added an exclusion for ASTs containing liquefied petroleum gas and liquefied natural gas to 18 AAC 75.915(b).</p>
44.	<p><u>Comment:</u> One commenter stated that the definition for “Class 2 facility” was unclear whether support services for facilities with contingency plans would be considered Class 2 facilities. Another commenter suggested that the definition should exclude support services for facilities with contingency plans.</p> <p><u>Response:</u> The department has determined that support services that meet the definition of a Class 2 facility, and are not incorporated into a facility’s contingency plan, will be required to meet the Class 2 facility requirements.</p>
45.	<p><u>Comment:</u> One commenter noted that the definition for “Class 2 facility” excludes residential structures storing “heating oil” and wondered if a residential structure with an AST storing propane or other oils would be considered a “Class 2 facility”.</p> <p><u>Response:</u> The department has modified 18 AAC 75.915(b) to exclude ASTs containing liquefied petroleum gas or liquefied natural gas.</p>
46.	<p><u>Comment:</u> One commenter suggested that the definition for “placed in service” should be the same as the definition in 18 AAC 75.990(178).</p>

	<u>Response:</u> The definition for “placed in service” in 18 AAC 75.990(178) was not used because it includes language that is not applicable to ASTs at Class 2 facilities.
47.	<p><u>Comment:</u> One commenter suggested that the definition for “removed from service” should be similar to the definition in 18 AAC 75.047(i) and 18 AAC 75.080(p). Another, suggested amending it to, “means, (A) empty; (B) isolated from product issue and/or receipt capability”.</p> <p><u>Response:</u> The department has deleted the definition “removed from service” and replaced it with “permanently closed”, which is based on the EPA’s definition for that term.</p>
48.	<p><u>Comment:</u> One commenter noted that “storage capacity” is already defined in 18 AAC 75.990. The commenter suggested that if the department keeps the new definition, it should amend it with the phrase, “for purposes of 18 AAC 75.915 - 18 AAC 75.985”.</p> <p><u>Response:</u> The department created a separate definition because the capacity for piping is not included in the calculation for Class 2 facilities. The phrase, “In 18 AAC 75.915 - 18 AAC 75.985, unless the context indicates otherwise” is already included in 18 AAC 75.985.</p>
49.	<p><u>Comment:</u> One commenter stated that the definition of “transient lodging” is confusing and questioned whether it is intended to refer to “hotel” or “motel”. If so, the department should use those terms. Otherwise, does the term mean “camp facility”?</p> <p><u>Response:</u> The definition was updated to clarify that it includes: hotels, motels, hostels, employer-provided housing, and resorts.</p>